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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Pawel Musial

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EXAMINER

CHAKOUR, ISSAM

ART UNIT

PAPER NUMBER

2617

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/582,569	<b>Applicant(s)</b> MUSIAL, PAWEL	
	<b>Examiner</b> ISSAM CHAKOUR	<b>Art Unit</b> 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>06/12/2006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This office action is in response to the amendments and arguments entered on 10/20/2008.

The applicant amended claims 1-3 and 10-12.

The examiner corrects the typographic error of “divices” in the bibliographic datasheet.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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3. Claims 1-2, 9-11, and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 6,580,914) in view of Meade (US 2003/0073412 A1) and further in view of Kabala (US 6,539,393)

Consider claims 1, 10, and 19, Smith discloses a method for providing user data pertaining to a user of a mobile terminal to a recommender system (e.g. remote resource server, See column 2, lines 1-8), the method comprising the steps of:

determining, by the terminal, a current location of the terminal (See Column 3, lines 24-25) wherein said current location is determined after receiving a initiating signal, said initiating signal being one of a user input and a received signal (See column 2, lines 1-4, note that the user initiate the request to determine the location by an input to the mobile handset);

saving, in the terminal, an identifier (See claim 2 and 3) of the determined location.

informing, by means of the terminal, said recommender system of a consumer electronic device of the determined location (See Column 3, lines 23-30).

(Note: determining the location data and prompting their transmission requires storing them and attributing them to an identifier that identifies the data to its respective region, since the transfer of location information between the base-stations and the remote resource server is done via the hand held device, when the hand held device as described by Smith forwards the location information, before doing so it has to store it before sending it).

Smith fails to explicitly teach that the recommender being a consumer device. Nor does he teach explicitly determining the location and saving it based on longevity of said terminal in an area proximate said current location.

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However, Meade teaches the mobile being used to apply and update user preferences in appliances and consumer devices such as DVR, PVR, or TIVO (See column 8, lines 51-54).

Also, Kabala discloses a processor that determines longevity (e.g. duration of stay) of terminals within an area (See column 14, lines 3-4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Smith's invention with the feature taught by Meade in order to receive user preferences in devices such recommender systems. It would have been further obvious to combine the obviously modified method as taught by Smith in view of Meade with the limitation disclosed by Kabala because it would allow Smith's invention to use the location information when roaming outside home area of service as a recommending feature for suggesting programs that are relevant to the user, in another word, by the same token that Smith's invention filters out based on location only information and preferences that are of interest to the user and providing them to the user. Smith's invention would be readily applicable to other devices such as TIVO, in which case the location would only be of interest if the user stays long enough in a particular area as oppose to passing by. Therefore, Smith's invention in view of Meade and Kabala is an obvious modification.

4. Consider claims 2 and 11, Smith in view of Meade and Kabala discloses the method in accordance with claims 1 and 10 respectively, Smith further teaches the method wherein said terminal further includes has an input device, said input device providing means for providing said initiating signal (See column 2, lines 1-4, note that

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the user initiate the request through a user interface to determine the location by an input to the mobile handset).

5. Regarding claims 9 and 18, Smith in view of Meade and Kabala teaches the limitation in accordance with claims 1 and 10 respectively; Smith further teaches the method wherein the determining, saving steps are initiated automatically (See column 5, lines 29-30) by the terminal without the intervention by the user other than moving the terminal to a different location. However, Smith does not teach that the informing step is automatically initiated, but by means of a request by user. Meade on the other hand teaches the informing step is initiated automatically between the mobile device and a recommender (See column 10, lines 34-42). Note that making a process automatic as opposed to prompt input and manual initialization is recognized as part of the ordinary capabilities of one skilled in the art. It would have been obvious to one of ordinary skill at the time of the invention was made to add this feature to Smith's invention because of the convenience it offers the user.

6. Claims 3-8 and 12-17 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Smith in view of Meade and Kabala and further in view of O'Neil (US 2002/0107027).

7. Consider claims 3 and 12, Smith in view of Meade and Kabala teaches the method and the terminal in accordance with claims 1 and 10 respectively. Smith in view of Meade and Kabala fails to explicitly teach the method wherein said received signal causes said terminal to execute the steps of:

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recognizing, from the signal, whether said determined location is outside a predefined home territory of the user, and

if it is recognized that the terminal is outside the home territory, automatically and without intervention by the user other than moving the terminal to a different location, initiating a timer for starting a first predetermined time period.

Nonetheless, O'Neil discloses a method wherein said received signal causes said terminal to execute the steps of:

recognizing, from the signal, whether said determined location is outside a predefined home territory of the user, and if it is recognized that the terminal is outside the home territory (inherent in roaming cellular phones), automatically and without intervention by the user other than moving the terminal to a different location (See claim 2 and 3).

initiating a timer for starting a first predetermined time period (See [0039], lines 22-23.

Note that timer is indispensable in application where counting the duration, delaying, or measuring time is required).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to implement the system taught by Smith in view of Meade and Kabala with an automatic start of timer to record the presence of the user at a location other than his/her home location, because in Smith's invention, the location determines what type of information is to be presented to the user, but only if the user stays at that location for a given time would the system validate that the user is effectively is at a location different from his/her home location, otherwise the user is passing by, roaming, or not staying there for long, which may not necessarily be of interest to the user.

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8. Regarding claim 4 and 13, Smith in view of Meade, Kabala, and O'Neil teach the method and the terminal according to claim 3 and 12 respectively. O'Neil further teaches that the current location determined in the determining step changes in correspondence with movement of the terminal, said current location comprising at any moment a region and a sub-region within the region (See abstract), the region and sub-region (an example of the region is particular shopping mall, wherein the sub-regions are local stores within that mall, see [0028], line 7) being discernible by the terminal from the signal, the starting step further comprising the step of monitoring said signal to determine whether at least one of the region and the sub-region stays constant over said first predetermined time period (See [0042], lines 4-6).

It would have been obvious to use O'Neil timing scheme because one of ordinary skill in the art at the time of the invention would have had a good reason to pursue the idea of timing the location of the user in a particular region as it would have been within his/her technical grasp. In another word, after determining the location of the user, before recommending any advertising or considering the location as one of interest to the user, there must be a time interval to test if the user is effectively in an area long enough and he/she is not just passing by or roaming the area shortly.

9. Regarding claims 5, 8 and 14, 17 Smith in view of Meade and Kabala in further view of O'Neil teaches the method and the terminal in accordance with claims 4 and 17 respectively. Smith in view of Meade, Kabala, and O'Neil teaches the method wherein the monitoring step comprises the steps of: monitoring said signal to determine whether the region stays constant over said first predetermined time period as mentioned above.



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Smith in view of Meade, Kabala, and O'Neil does not explicitly teach the step further comprising monitoring said signal to determine whether the sub-region stays constant over a second predetermined time period. However, it would have been obvious to one of ordinary skill in the art at the time of invention to monitor the location of the user in an area that is smaller than the previous one for another predetermined period of time, because part of the recommender's function is to narrow down or further filter the advertising and commercial information to those relevant to the user interest based on the reported location. It would have been obvious to further test if the user for example is still at a certain location in the shopping center or have moved to another gallery where there are no stores but rather a food court or parking garage. Furthermore, the monitoring is obvious to have encompassed testing if the user is at particular gallery or just passing by after shortly checking merchandise, if the user is there for shorter time than the predetermined time, then the recommender would not transmit the relevant commercial information of said gallery. Similarly, before storing its location as one of interest, the mobile would continuously monitor its location over another predetermined period of time to see if the user is at that location or have moved on. Therefore, it would have been obvious to one of ordinary skill in the art to pursue these steps which would have yielded the predictable results as set forth above.

10. As to claims 6 and 15, Smith in view of Meade, Kabala, and O'Neil teaches the method as discussed above in accordance with claims 5 and 14 respectively, Smith further teaches the saving step further comprises the step of saving the region as an identifier (See claim 2 and 3) and the informing step comprises the step of informing the

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recommender system of said region (See claim 6). Smith in view of Meade, Kabala, and O'Neil teaches testing the region to determine if has stayed constant over a period of time as mentioned above. However Smith in view of Meade and O'Neil does not explicitly teach that when the condition is satisfied saving the region or location information as an identifier. Although Smith in view of Meade, Kabala, and O' Neil does not explicitly teach the condition that if it is determined that the region has stayed constant over said first predetermined time period, testing for this condition would have been obvious because the purpose of including a monitoring step is to monitor the events by testing whether the timer reached a predetermined amount of time in the same region, if it does without any change of the location of the user, then this region might be of an interest to the user, and saving it for later transfer of this location information to the recommender for updating the preferences.

11. With regards to claims 7 and 16, Smith in view of Meade, Kabala, and O'Neil teach the method as discussed above in accordance with claims 6 and 15 respectively, Smith does not teach the method wherein, if it is determined that both the region and the sub-region have stayed constant over the first and second predetermined time periods respectively, the saving step further comprises the step of saving the sub-region as an identifier and the informing step comprises the step of informing the recommender system of said sub-region. However, as mentioned above, the monitoring function not only tests if the user has changed location in a region in a given time, it also has to test for change of location in a much narrower area (sub-region) if the first region is much larger (correspondingly contains broader array of news, advertising or commercial

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information, See Colum 4, lines 19-30 in Smith), it would then have been obvious to one of ordinary skill in the art at the time of the invention, to store the location of the sub-region as an identifier because it will allow Smith to further narrow down by means of the recommender the selection or recommendation of information of particular stores, news, or weather info (as in Smith, column 4, lines 11-17 and 18-30) in that particular region whose identifier has been transmitted to the recommender.

### ***Response to Arguments***

Applicant's arguments with respect to claim 1-19 have been fully considered but are moot in view of the new ground(s) of rejection presented above.

Regarding claims 1, 2, 9, 10, 11, 18, and 19, the examiner respectfully disagrees with the traverse made by the applicant.

The applicant amended claims 1, 2, 10, and 11 and submitted that the combination of the cited references - Smith in view of Meade and O'Neil fail to disclose the claimed invention. The examiner respectfully disagrees and provides another a further reference by Kabala (US 6,539,393) necessitated by the applicant amendment, in which it is provided a motivation to combine Smith's invention with O'Neil teaching of a timer in the proposed recommending system application, in another word, Kabala discloses a technique in which determining the amount of time, a particular device has stayed within a given area. An ordinary person skilled in the art would have construed that such technique entails utilizing a timer as disclosed by O'Neil to determine the longevity of the device in an area proximate to the location being continuously determined and updated.

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On the other hand, as stated above, Smith discloses a method of using location information to provide selections or preferences that have been filtered out based on the location- hence a recommending system, therefore an application of said method in set-top box or DVR would give predictable results knowing that programming or news are filtered similarly based on location, but since a user might not necessarily need programming of any region he passes by, a threshold timing technique as the one taught by Kabala enables Smith's invention in view of Meade to test whether the user has stayed significantly long enough in a particular region that an automatic storage of that location might be used for recommending the news or programming of the region of potential user interest.

Regarding claims 3-8 and 12-17, the examiner respectfully disagrees with the traverse made by the applicant.

The applicant amended claims 3 and 12 and submitted that claims 3-8 and 12-17 are allowable by virtue of their dependency on the independent claims. The examiner respectfully disagrees and acknowledges that the independent claims are not allowable as they are disclosed by the cited above references. Therefore claims 3-8 and 12-17 are rejected as stated above, in addition to their inherency of the deficiency of the independent claims.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ISSAM CHAKOUR whose telephone number is (571) 270-5889. The examiner can normally be reached on Monday-Thursday (8:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Perez Rafael can be reached on (571) 272-7915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/I. C./

Examiner, Art Unit 2617

/Alexander Eisen/

Supervisory Patent Examiner, Art Unit 2617

5-Jan-09